

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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FIDEL H. PAJARILLO,  
Plaintiff,  
v.  
KRISTIN A. SCHULER-HINTZ; AN  
INDIVIDUAL; AND MICHAEL CHEN,  
AN INDIVIDUAL; U.S. BANK  
NATIONAL ASSOCIATION,  
Defendants.

Case No. 2:22-cv-00664-ART-BNW  
ORDER

This case is brought by *pro se* plaintiff Fidel Pajarillo (“Pajarillo”) and involves various accusations that appear to be related to the foreclosure of Pajarillo’s home. Before the Court are Defendants’ motion to dismiss or in the alternative motion for summary judgment (ECF No. 6) (hereinafter “motion to dismiss”), Pajarillo’s motion to extend time to file an opposition to the motion to dismiss (ECF No. 8), Pajarillo’s objection to the magistrate judge’s order striking his amended notice of additional defendants (ECF No. 17) and Defendants’ motion for ruling and status update (ECF No. 22).

For the reasons set forth below, the Court grants Defendants’ motion to dismiss based on lack of subject matter jurisdiction. The remaining pending motions are denied as moot.

**I. Procedural History**

Pajarrillo filed his Complaint, titled “Complaint for Interpleader and Declaratory Relief” on April 21, 2022 (ECF No. 1) naming Kristin A. Schuler-Hintz and Michael Chen as the sole Defendants. He filed what he titled “Amended Notice of Additional Defendant” (ECF No. 5), which appears to be an amended

1 complaint (hereinafter “Amended Complaint”)<sup>1</sup> naming U.S. Bank National  
2 Association as an additional Defendant and leaving Kristin A. Schuler-Hintz and  
3 Michael Chen in the Amended Complaint as party defendants. *Id.* Defendants  
4 filed a motion to dismiss on May 17, 2022. (ECF No. 6.) Plaintiff filed a motion  
5 to extend time to oppose the motion to dismiss (ECF No. 8) but did ultimately  
6 respond to the motion to dismiss (ECF No. 11) and Defendants then replied (ECF  
7 No. 13). Plaintiff also filed, on June 14, 2022, an “Amended Notice of Additional  
8 Defendants (ECF 10) purporting to add Matthew P. Pawlowski, Esq. and Mary  
9 Baca as party defendants in this action. Following a motion to strike, the Court  
10 struck the pleading. (ECF No. 16.)

## 11 **II. Discussion**

### 12 **A. Factual Background**

13 This matter appears to relate to real property that was foreclosed upon.  
14 The Amended Complaint is incoherent, refers to this as an interpleader action,  
15 and invokes federal question and diversity jurisdiction with reference to statutes  
16 but without factual allegations to support the invocation of jurisdiction. The  
17 Amended Complaint also references admiralty jurisdiction by citation to a  
18 statute. Confusingly, it also asserts that, “The Nevada district court of the united  
19 states lacks subject matter jurisdiction under F.R.C.P. 12b (1) lack of subject-  
20 matter jurisdiction; (2) lack of personal jurisdiction, due to failure of a general  
21 appearance and lack of ratification of commencement by the real party of interest  
22 under F.R.C.P. 17(a)(3).” (ECF No. 5.) The alleged causes of action appear to  
23 include the accusation that Countrywide Home Loans Servicing was not the  
24 lender or the owner of the account from which funds were transferred on  
25 December 2, 2005, as required by U.S. Patriot Act and various other laws and  
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27 <sup>1</sup> Because it appears that ECF No. 5 is the Amended Complaint (Pajarillo refers to it as a Complaint on Page 14) the  
28 Court will refer to it throughout the Order, but the Court’s reasoning would apply to Pajarillo’s original complaint  
(ECF No. 1) as well.

1 rules. The Amended Complaint consists largely of statutes cut and pasted into  
2 the document. Overall, it appears to relate to a foreclosure.

3 Defendants' motion to dismiss attaches various exhibits and sheds light  
4 on what could be the subject of the Amended Complaint. On December 2, 2005,  
5 the Debtor/Plaintiff entered into a residential real estate finance agreement  
6 ("Note") with Countrywide Home Loans, Inc., for the purchase of the property  
7 located at 6706 Zephyr Wind Ave., Las Vegas, Nevada 89139 (the Subject  
8 Property"). (ECF No. 6; Exhibit A)("Note".) The Note was secured by a Deed of  
9 Trust encumbering the Property. See, Deed of Trust (*Id.* at Exhibit B.) The loan  
10 has been in default on payments since April 1, 2008, and Defendant has sought  
11 foreclosure against the subject real property since that default. On May 21, 2021,  
12 Defendant U.S. Bank National Association concluded its foreclosure sale on the  
13 subject real property, with the Trustee's Deed Upon Sale having been recorded  
14 on June 1, 2021. (*Id.* at Exhibit C)("Trustee's Deed Upon Sale".) Defendants  
15 explain that the two individual defendants in Pajarillo's initial Complaint are  
16 attorneys with the law firm of McCarthy & Holthus, LLP. His Amended Complaint  
17 names U.S. Bank National Association as an additional Defendant and leaves  
18 Kristin A. Schuler-Hintz and Michael Chen in the Amended Complaint as party  
19 defendants. Neither Schuler-Hintz nor Michael Chen is a party or signatory to  
20 the Note or Deed of Trust. (*Id.* at Exhibits A and B.)

### 21 **B. Subject Matter Jurisdiction**

22 The Amended Complaint is subject to dismissal for lack of subject matter  
23 jurisdiction. Federal courts are courts of limited jurisdiction, having subject  
24 matter jurisdiction only over matters authorized by the Constitution and  
25 Congress. See *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).  
26 Defendants move to dismiss for lack of subject matter jurisdiction pursuant to  
27 Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) jurisdictional challenge can be either  
28

1 facial, confining the inquiry to allegations in the complaint, or factual, permitting  
2 the court to look beyond the complaint. *White v. Lee*, 227 F.3d 1214, 1242 (9th  
3 Cir. 2000). Once the moving party has converted the motion to dismiss into a  
4 factual motion by presenting affidavits or other evidence properly brought before  
5 the court, the party opposing the motion must furnish affidavits or other  
6 evidence necessary to satisfy its burden of establishing subject matter  
7 jurisdiction. *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989).

8       There is no diversity jurisdiction. The diversity jurisdiction statute  
9 establishes federal jurisdiction over civil actions where the matter in controversy  
10 exceeds \$75,000 and, as relevant here, if the action is between citizens of  
11 different States or citizens of a State and citizens or subjects of a foreign state.  
12 28 U.S.C. § 1332(a). Inherent in this statute is the requirement that the state  
13 citizenship of all plaintiffs differ from that of all defendants. This requirement is  
14 called “complete diversity,” 28 U.S.C. § 1332(a), and the burden of establishing  
15 it belongs to the party claiming that the Court can exercise original federal  
16 subject matter jurisdiction over the case based on the diversity statute. *Hertz*  
17 *Corp. v. Friend*, 559 U.S. 77, 96 (2010). As contained on the first page of the  
18 Amended Complaint (ECF No. 5), Plaintiff Pajarillo resides in Las Vegas, Nevada.  
19 Pursuant to the Declarations of Kristin A. Schuler-Hintz and Michael Chen,  
20 attached to the motion to dismiss, both Defendants are residents of the State of  
21 Nevada, County of Clark, and have been for many years. (ECF No. 6.) Based on  
22 the obvious residencies of the parties in this action, this Court lacks subject  
23 matter jurisdiction based upon diversity of citizenship. Plaintiff’s response  
24 broadly accusing defendants of perjury, fraud, forgery, counterfeiting, and  
25 various other crimes. (ECF No. 10.) This is insufficient to establish diversity  
26 jurisdiction.

27       The Court likewise does not have federal question jurisdiction. It appears  
28 Plaintiff attempts to assert some unidentified federal question or claim, which

1 could give rise to this Court's jurisdiction under 28 U.S.C. § 1332(a). District  
2 courts have original jurisdiction of all civil actions arising under "the  
3 Constitution, laws or treaties of the United States." 28 U.S.C. § 1331. Pajarillo's  
4 Amended Complaint does not support federal question jurisdiction. While he  
5 refers to several federal statutes and regulations, he does not allege any facts  
6 that would support federal question jurisdiction. *See Ivey v. Bd. of Regents of the*  
7 *Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982) (this court "may not supply  
8 essential elements of the claim that were not initially pled."); *Oneida Indian*  
9 *Nation v. Cty. of Oneida*, 414 U.S. 661, 666 (1974) (Dismissal is appropriate when  
10 the purported federal claim is "so insubstantial, implausible, . . . or otherwise  
11 completely devoid of merit as not to involve a federal controversy.").

12 Pajarillo's Amended Complaint likewise does not allege facts that support  
13 this being a rule interpleader action. Under federal law, there are two forms of  
14 interpleader: rule interpleader, under Federal Rule of Civil Procedure 22; and  
15 statutory interpleader, under 28 U.S.C. § 1335. "Interpleader is a procedural  
16 device used to resolve conflicting claims to money or property. It enables a person  
17 or entity in possession of a tangible res or fund of money (the 'stakeholder') to  
18 join in a single suit two or more 'claimants' asserting mutually exclusive claims  
19 to that stake." 4 James Wm. Moore et al., *Moore's Federal Practice* § 22.02[1] (3d  
20 ed. 2002). Subject matter jurisdiction in interpleader actions brought under Rule  
21 22 ("rule interpleader") must be based on the general jurisdiction statutes  
22 applicable to civil actions in federal court. *See Island Title Corp. v. Bundy*, 488 F.  
23 Supp. 2d 1084, 1090 (D. Haw. Apr. 11, 2007). Because subject matter  
24 jurisdiction does not exist under the general subject-matter and diversity  
25 jurisdiction provisions, 28 U.S.C. §§ 1331, 1332, an interpleader action may not  
26 be brought under Rule 22 of the Federal Rules of Civil Procedure.

27 The Amended Complaint does not allege facts to bring it within the ambit  
28 of the statutory interpleader provision. Generally, a federal court has jurisdiction

1 over a claim pursuant to 28 U.S.C. § 1335, the “statutory interpleader” provision,  
 2 if five requirements are met. *See generally* Wm. W. Schwarzer, et al., *Federal Civil*  
 3 *Procedure Before Trial* §§ 10:78–10:104 (William A. Rutter et al. eds., 2000). First,  
 4 a “stake” or “res” must exist that is “under the control of the person bringing the  
 5 lawsuit so as to be deliverable to the registry of the court.” *General Atomic Co. v.*  
 6 *Duke Power Co.*, 553 F.2d 53, 56 (10th Cir. 1977). The “stake” must be valued  
 7 at “\$500 or more.” 28 U.S.C. § 1335(a). Second, the plaintiff must establish that  
 8 “[t]wo or more adverse claimants . . . are claiming or may claim entitlement to”  
 9 the stake. 28 U.S.C. § 1335(a)(1). *See also Libby, McNeill, & Libby v. City Nat’l*  
 10 *Bank*, 592 F.2d 504, 507 (9th Cir.1978) (“Of course, a basic jurisdictional  
 11 requirement of a statutory interpleader action [] is that there be ‘adverse  
 12 claimants’ to a particular fund.”) (citations omitted). Third, the claims must be  
 13 “adverse to and independent of one another.” 28 U.S.C. § 1335(b). Fourth,  
 14 minimal diversity—defined as “diversity of citizenship between two or more  
 15 claimants, without regard to the circumstance that other rival claimants may be  
 16 co-citizens”—must exist. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523,  
 17 530 (1967). Finally, venue must be proper. *See* 28 U.S.C. § 1397. A statutory  
 18 interpleader action “may [only] be brought in the judicial district in which one or  
 19 more of the claimants reside.” 28 U.S.C. § 1397.

20 Statutory interpleader is a limited remedial device, and one that would be  
 21 inappropriately used here. As Defendants argue there is no stake or res that  
 22 Pajarillo is in possession of, which this court could possibly adjudicate between  
 23 the Defendants. The only, “stake,” that one could conceivably be at issue Pajarillo  
 24 is the Subject Property. The Court takes judicial notice of the Note and Deed of  
 25 Trust, as well as any other exhibits that are matters of public record and  
 26 recorded in the Clark County Recorder’s Office against the Property. *United State*  
 27 *v. Corinthian Colls.*, 655 F.3d 984, 998-999 (9th Cir., 2011) (a court may take  
 28 judicial notice of public records if the facts noticed are not subject to reasonable

1 dispute). Pajarillo was divested of ownership and title of the Subject Property on  
2 May 21, 2021, when the Subject Property was sold at foreclosure sale to a third  
3 party. Ergo, Pajarillo is not in possession or control of any, “stake.” Further,  
4 neither Schuler-Hintz nor Chen have any fathomable claim to any, “stake,” that  
5 Pajarillo could possibly be alluding to in his Amended Complaint. Neither Chen  
6 nor Schuler-Hintz, in their individual capacity, possesses any actual or potential  
7 claim to any res held or owned by Pajarillo.

8 The Court also finds that the claims here are devoid of any conceivable  
9 merit, depriving the Court of subject matter jurisdiction. Generally, a federal  
10 court lacks subject matter jurisdiction to consider claims that are “so  
11 insubstantial, implausible, foreclosed by prior decisions of this Court, or  
12 otherwise completely devoid of merit as not to involve a federal controversy.” *Steel*  
13 *Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (citations and internal  
14 quotations omitted); *Hagans v. Lavine*, 415 U.S. 528, 537 (1974) (court lacks  
15 subject matter jurisdiction over claims that are “essentially fictitious,” “obviously  
16 frivolous,” or “obviously without merit”).

17 The Court thus dismisses this case based on lack of subject matter  
18 jurisdiction. As such it declines to reach the remaining arguments raised by  
19 Defendants.

### 20 **C. Leave to Amend**

21 The Court will not grant leave to amend because the Amended Complaint  
22 is incomprehensible with no basis in fact and law but will dismiss this case  
23 without prejudice. Federal Rule of Civil Procedure 15(a) provides that a trial court  
24 shall grant leave to amend freely “when justice so requires.” The Supreme Court  
25 has stated that “this mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178,  
26 182 (1962). “A document filed *pro se* is to be liberally construed, and a *pro se*  
27 complaint, however inartfully pleaded, must be held to less stringent standards  
28



1 than formal pleadings drafted by lawyers.” *Woods v. Carey*, 525 F.3d 886, 889-  
2 90 (9th Cir. 2008) (citations and internal quotation marks omitted). If, however,  
3 a court finds that a *pro se* complaint has failed to state a claim, dismissal may  
4 be with or without leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1126-30 (9th  
5 Cir. 2000). Defendants urge the Court to deny leave to amend and Plaintiff  
6 provides no coherent reason to give him leave to amend. Neither the Amended  
7 Complaint nor Plaintiff’s pleadings give the Court any confidence that  
8 amendment could cure the myriad defects in the Amended Complaint.

9  
10 IT IS THEREFORE ORDERED that Defendants’ motion to dismiss (ECF  
11 No. 6) is GRANTED consistent with this Order;

12 IT IS FURTHER ORDERED THAT the Complaint (ECF No. 1) and Amended  
13 Complaint (ECF No. 5) are DISMISSED WITHOUT PREJUDICE<sup>2</sup>;

14 IT IS FURTHER ORDERED that Plaintiff’s Motion to Extend Time (ECF No.  
15 8) is DENIED AS MOOT;

16 IT IS FURTHER ORDERED that Plaintiff’s objection to the magistrate  
17 judge’s order striking his amended notice of additional defendants (ECF No. 17)  
18 is DENIED AS MOOT;

19  
20 IT IS FURTHER ORDERED that Defendants’ motion for ruling and status  
21 update (ECF No. 22) is DENIED AS MOOT;

22 IT IS FURTHER ORDERED the Clerk of Court is directed to enter judgment  
23 accordingly and close this case.

24 DATED THIS 17<sup>th</sup> Day of February 2023.

25 

26 ANNE R. TRAUM  
27 UNITED STATES DISTRICT JUDGE

28 <sup>2</sup> The Court notes that the Amended Complaint is docketed as Amended Notice of Additional Defendant. Though it appears in substance to be the operative complaint, the Court includes the original complaint out of an abundance of caution.